83-487

No. 83-

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

MANGALICK ENTERPRISES, INC.

Petitioner

v.

DONALD FREEDMAN and
TREE-TIME, INC. - INTERLUDE

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

H. Hume Mathews
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Laughlin & Reichard, P. A.
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ATTORNEY FOR PETITIONER

QUESTIONS PRESENTED

Lack of Due Process

1. Did the United States Court of Appeals for the Third Circuit deny Petitioner due process by refusing to give any opinion or explanation stating at least the basic facts and/or conclusions on which the Court denied those contentions of Petitioner clearly set forth in Petitioner's brief on appeal and which, if accepted by the Court of Appeals, would have required a decision by that Court in Petitioner's favor?

Lack of Evidence of "Access"

2. Should the jury verdict of copyright infringement of two United States copyrights be set aside as not supported by

the evidence, or should Petitioner's Motions for judgement notwithstanding the verdict or for a new trial have been granted, under circumstances wherein:

A. Respondents did not identify and were unable to identify the Indian craftsman or craftsmen who wove the alleged infringing Indian wall hangings found by the jury to infringe Respondents United States registered copyrights; and

B. No evidence was submitted to the jury showing that the unidentified Indian craftsman or craftsmen who had woven the two hangings found to infringe had "access" to the Respondents copyrighted hangings, prior to

the weaving of the two hangings found to infringe?

Who Is An "Author" Under The 1909 Copyright Act?

3. Can a person who is incapable of weaving a wall hanging, and who admits he had never woven any, be recognized as a matter of law under the 1909 United States Copyright Act in a valid United States copyright registration, as the "author" of an Indian wall hanging as a work of art which actually was woven not by said person who claimed to be the "author" but by an Indian craftsman?

Pre-Emption of State Unfair Competition Law by Federal Copyright Act

4. Can a United States District Court properly award to a plaintiff and against a defendant damages for unfair

competition under the laws of the State of New Jersey, on the basis of the alleged copying by said defendant of two Indian wall hangings copyrighted by said plaintiff under the United States copyright statutes, and with respect to which a jury awarded damages to said plaintiff and against said defendant for copyright infringement under the United States copyright statutes?

List of Parties Involved

Pursuant to the Rules of this Court, the following is a list of the parties to the proceedings in the Court of Appeals, whose judgement is sought to be received:

MANGALICK ENTERPRISES, INC.

DONALD FREEDMAN

TREE-TIME, INC. - INTERLUDE

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IN THE

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October Term 1983

No. 83-

MANGALICK ENTERPRISES, INC.

Petitioner

v.

FREEDMAN, DONALD and
TREE-TIME, INC. - INTERLUDE,

Respondents

PETITION FOR A
WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

OPINION BELOW

The United States Court of Appeals for the Third Circuit issued a Judgement Order, entered August 8, 1983, affirming

the Judgement of the district court filed July 22, 1980 and the Orders of the district court filed October 29, 1980, and November 1, 1982. A copy of the Judgement Order of the Court of Appeals is attached as Appendix A. Copies of the Judgement and of the Orders of the District Court are attached as Appendices B, C, and D. The Notice of Appeal to the Third Circuit Court of Appeals was filed November 29, 1982. A copy is attached as Appendix E.

A Petition for Rehearing, filed in the Court of Appeals on August 19, 1983, was denied on August 26, 1983. A copy of the denial is attached as Appendix F.

Petitioner requests review of the decision of the United States Court of Appeals for the Third Circuit (Judgment Order filed August 8, 1983) and of the denial by said Court of Petitioner's

Petition for Rehearing. Said denial was filed August 26, 1983.

JURISDICTION

Jurisdiction of this Court is inovked pursuant to 28 U.S.C. 1254(1), to review the Judgement of the United States Court of Appeals filed August 8, 1983 and to review the denial by said Court, filed August 26, 1983, of the Petition for Rehearing.

This petition for writ of certiorari is being filed within 60 days of the date of the denial of the Petition for Rehearing.

STATEMENT OF THE CASE

Respondents, Freedman et al, initiated this action by filing a complaint in the United States District Court for the District of New Jersey charging Petitioner,

Mangalick Enterprises, Inc., with:

(A) In the "First Cause of Action," with having infringed five copyrighted Indian wall hangings registered in the United States copyright office by Respondents; and

(B) In the "Second Cause of Action," with having violated the law of unfair competition in the State of New Jersey by:

(i) having violated Respondents Indian copyrights, alleging that the "importation and use in competition with the Respondents of wall hangings illegally copied from Respondents in India constitutes unfair competition in the State of New Jersey," and

(ii) by Petitioner's infringement of the Respondents copyrighted wall hangings and - - .

The case was tried before a jury. The verdict of the jury held that Petitioner had infringed two of the five wall hangings copyrighted in the United States by Respondents, and that Petitioner had committed unfair competition violations against Respondents.

The case was unusual in that the main issue which developed during the trial was a question of the true meaning of the word "author", under the 1909 Copyright Act. Neither of the parties, Respondent Freedman or Petitioner Mangalick, was capable of weaving wall hangings. Respondent Freedman personally could not, and admitted he did

not, weave the originals of the hangings in issue that he had copyrighted, as the author thereof, in the United States. Freedman claimed to be the author under the 1909 Copyright Act, and thereby to be entitled as the "author" to the United States copyright registration, by reason of his testimony to the effect that he had made a sketch showing the nature of each wall hangings he desired to have woven, that he had transmitted the said sketch (through a middle man) to a "master" weaver (an Indian craftsman who wove original weaving as distinct from mere reproductions of the original weaving), who then had created the original weaving following said Freedman sketch.

Freedman, on cross-examination, admitted he did not know and had never met any person he could identify as having

woven any of the original hangings. Freedman, after reproductions of the original hangings were delivered to him in the United States, obtained, as "author", copyright registrations thereof in the United States.

Under these circumstances, Petitioner Mangalick contended at the trial that Freedman could not be the "author" under the copyright statutes, of the hangings actually woven not by Freedman but by the Indian craftsman. Freedman would, of course, be the author under the copyright statutes of the sketch he himself drew, but he could not as a matter of copyright law be the author of the weavings actually created by an Indian craftsman, regardless of whether or not that craftsman had followed Freedman's sketch showing the nature of a wall hanging Freedman wished to have woven. This Petitioner asserts

is particularly true in this case because Freedman admitted he could produce no evidence of any direct contact he had had with any of the unknown Indian weavers who created the original wall hangings copyrighted by Freedman in the United States.

The question of whether Freedman could have acquired ownership rights to the copyrights in question by agreement express or implied, never became relevant in the trial. Freedman never claimed or relied on any such acquisition of ownership of the copyright rights to the wall hangings in issue. Freedman asserted, flatly, unequivocally and without reliance on any other source of his claims of ownership of the copyrights, that he and he alone was the "author" of the original wall hangings in issue.

Petitioner Mangalick's business was

the importing of goods from India into the United States. As such, and in the normal course of his business, Petitioner bought some Indian wall hangings being offered for sale on the open market in India by an Indian supplier of such hangings. The hangings so purchased were already in existence in the supplier's inventory, at the time Mangalick selected them for purchase. Petitioner Mangalick had nothing to do with, or any knowledge of, the origin of the hangings he purchased. It was two of these wall hangings purchased by Petitioner for import into the United States that the jury found to infringe two of Respondent Freedman's United States copyrights.

Later, in preparing for trial, Petitioner Mangalick was informed upon inquiry to the Indian supplier (named

Yakoob) that he, the supplier, had woven the originals of all (except for one of unknown origin) the wall hangings involved in the copyright issues asserted in the complaint. However, Freedman denied this, asserting in his testimony that "Yakoob never weaved". The Jury accepted Freedman's said testimony and did not accept any part of the supplier Yakoob's testimony.

Freedman convinced the Jury that he was the true "author" of the original weavings he had copyrighted in the United States and on this basis the jury held his U. S. copyrights valid. Respondents did not prove or even attempt to prove one of the elements essential to a finding of copyright infringement where there is no direct evidence of copying, i.e. that the weaver who made the originals charged to infringe Respondents' copyrights, had

"access" to Respondents' copyrighted hangings prior to the alleged copying thereof.

It is true that the Jury must have found that the two hangings Petitioner had purchased and which were found to infringe, must have been "substantially similar" to Respondents' two hangings whose copyrights the Jury held to be infringed.

But the other essential requirement the Jury had to find present in evidence, ACCESS, and which it was Respondent's burden to prove, was not proved, was not even attempted to prove, and proof of which is completely lacking from all the evidence admitted in this case.

Thus, the Petitioner asserted, in his brief on appeal to the Third Circuit of Appeals, page 19:

> 5) Freedman did not prove one of the elements essential

> to a finding of copyright infringement on the facts in this case, i.e. Freedman did not prove that the weaver who made the Mangalick hangings charged to infringe had access to the Freedman copyrighted hangings prior to the alleged copying."

Respondent Freedman, in his brief on appeal, filed after Petitioner Mangalick filed Appellants' brief containing the above quoted assertion, did NOT deny said assertion or attempt to controvert it in any way, nor has to this day.

Nor did Freedman in his brief on appeal deny or attempt to controvert Mangalick's Argument on page 36 of Mangalick's brief on appeal, reading as follows:

> "B. To prove copyright infringement, where there is no direct evidence of copying, a Plaintiff must prove both substantial similarity and access, prior to the alleged copying.
>
> In this case, despite the prior views to the contrary expressed by Judge Stern--

and by the expert witness Punam Bhargava--the jury must have decided that two of Mangalick's hangings (the two found to infringe) were "substantially similar" to the hangings of the two Freedman registered copyrights found to be infringed. The test, "eyeballing," is a purely subjective one so who can say whether the jury's opinion was right or wrong?

With respect to access, however, the situation is entirely different. This must be proved by Plaintiff. 3 Nimmer on Copyrights § 13.01(B).

Freedman never proved, or submitted any evidence with respect to, the identity of the weavers who made the weavings Mangalick had purchased in India and which Freedman charged to infringe the two Freedman copyright registrations in question here. Nor did he accept Yakoob's testimony that he, Yakoob, had created the originals of Managalick's as well as Freedman's hangings. He specifically denied such testimony, and testified to the contrary. Without knowledge of the identity of

> the weaver who actually did the alleged copying, it was impossible for Freedman to have proved that such weaver had "access" to the Freedman copyrighted hangings, either prior to the time such alleged copying was carried out or at any other time. In any event, whether or not such proof was possible, Freedman had the burden of proving "access" and he did not do so.
>
> Therefore, the jury's verdict holding two of Mangalick's hangings to infringe two Freedman copyrights was not supported by the evidence; there was no evidence, no proof, showing the essential requirement of "access."

The only Mangalick hangings found by the jury to be substantially similar to Freedman's hangings were the two found to infringe. As to those, the penalties for copyright infringement under the U. S. statutes were applied, thus pre-empting the field and barring a separate penalty for "unfair competition" based on the same act

under state law. See Videotronics, Inc. v. Bend Electronics, et al 564 F.Supp. 1471.

The Court of Appeals decided the Appeal in this case by a Judgement Order, stating only that it found "no merit" in appellants contentions.

In its petition for rehearing, Appellant Mangalick pointed out that there was no evidence submitted to the jury on the basis of which they could have held that Freedman had met his burden of proving the essential requirement of "access".

Therefore in Appellants petition for rehearing, Appellant requested an opinion or explanation from the Court of Appeals sufficient to enable Appellant to understand the factual and legal basis of the Judgement Order, so that Appellant might intelligently decide whether or not to file a petition for writ of certiorari and if one should be filed, on what basis.

The Court of Appeals refused to issue any opinion, or to give any explanation of its said Judgement Order, notwithstanding that Appellant in its Petition for Rehearing stated that it believed refusal to do so under the circumstances of this case would amount to a denial of due process.

As required by the Rules, Petitioner states that the basis for jurisdiction in the Court of first instance in this action was under 28, U.S.C. **S S** 1331 and 1338.

REASONS FOR GRANTING THE WRIT

FIRST. There is a direct conflict between the decision of the Court of Appeals for the Third Circuit in this case and the decisions of the following cases in other circuits holding that a Plaintiff in a copyright infringement action has the burden of proving that the alleged copier

had "access" before he or she did the alleged copying:

> Twenthieth Century Fox Film Co. v. Dreckhaus, 153 F.2d 893,899 (8th Cir. 1946)
>
> Jackson v. Washington Monthly Co., 481 F.Supp. 647,649 (D.C.D.C. 1979) Aff'd 675 F.2d 1340 (D.C. Cir. 1982) Cert. denied 1033 S. Ct. 215 (1982)
>
> Scott v. Paramount Pictures Corp., 499 F.Supp. 518,520 (D.C.D.C. 1978) Aff'd 607 F.2d 494 (D.C. Cir. 1979) Cert. denied, 499 U.S. 849 (1980)
>
> Ronald H. Selle v. Barry Gibb et al, (No. 78C3656) United States District Court for the Northern District of Illinois, Eastern Division, decided July 8, 1983 by Judge George N. Leighton, U.S.D.J. (Not yet reported in the advance sheets as of the date of this petition.)

In the present case, the Court of Appeals for the Third Circuit held, insofar as Petitioner can understand the basis of the Court's Judgement Order in the absence of an Opinion or explanation of same, that a Plaintiff in a copyright infringement action where there is no direct evidence of copying

need submit only evidence of substantial similarity, and that NO evidence of "access" need be submitted.

All the cases known to Petitioner's attorney are to the contrary, including those cited above. Therefore there is a direct conflict between the subject decision of the Court of Appeals for the Third Circuit and the decisions of the Courts of other circuits.

SECOND. The complaint in this case, insofar as it bases its charge of unfair competition under New Jersey State law on the alleged copying by Petitioner found by the jury to infringe two of Respondents' United States copyrights, conflicts with the Federal copyright statutes. The federal government, by its enactment of the copyright statutes has pre-empted the field where copyright infringement is

claimed. Where copyright infringement is claimed, the same acts of copying cannot be made the basis of a State claim of unfair competition because the State law of unfair competition is superceded and pre-empted by the Federal copyright statutes. Videotronics v. Bend Electronics, supra.

Similarly, Petitioner contends that the award of punitive damages in this case, insofar as it was based on copyright infringement, was improper because the Federal copyright statutes define the penalty for copyright infringement and thus pre-empt the field.

THIRD. Appellant Mangalick in his Petition for Rehearing to the Third Circuit Court of Appeals requested the Court of Appeals to issue an opinion or explanation of the basic facts and law on which it issued its Judgement Order, in order that

Petitioner might determine whether or not it had a proper basis for filing a Petition to the Supreme Court of the United States for a writ of certiorari.

Petitioner submits that the Court of Appeals refusal to issue any opinion or explanation whatsoever of the factual and legal basis of its Judgement Order, denied Petitioner his right to due process.

The regular course of administration of the United States federal judicial system contemplates that the district and appeal courts will each consider and rule upon separately all bona fide issues properly submitted to it for decision in the manner provided by the rules of the court and the decision of which could be determinative of the action.

In cases where there will be no further appeal or petition for a writ of certiorari to the Supreme Court, it may be that the

Circuit Courts of Appeal can dispose of such cases simply by judgement order, without ruling on the separate issues that had been presented to it in the briefs for decision, without denying appellant his due process right to the regular course of administration of the law through the federal district courts and the courts of appeal.

But in cases where an appellant wishing in good faith to consider the advisibility of attempting to take a case to a higher court, requests the court of appeals to hand down an opinion explaining its judgement order in sufficient detail to enable the appellant to understand the court of appeals rulings with respect to each of those separate issues as to which the court of appeals ruling would be determinative of the action, then the refusal of

such request by the court of appeals denies appellant due process because he is thereby denied adequate notice by the court of appeals of the nature of its factual and legal rulings with respect to each of those issues with respect to which he may wish to attempt a further appeal, either by way of a petition for writ of certiorari or otherwise.

In its Petition for Rehearing in this case Petitioner specifically requested the Third Circuit Court of Appeals to explain its Judgement Order disposing of the appeal, in order that petitioner not be foreclosed from further proceedings and thereby denied due process. In Mangalick's Petition for Rehearing to the Third Circuit Court of Appeals, petitioner stated as follows:

> "How can the losing party in a case like this, where the judgement amounts to no more

than "you lose", decide whether he has a proper ground for an attempt to have any injustice in the decision rectified by a higher court?"

Notwithstanding Appellants specific request for an opinion or explanation of the Court of Appeals Judgement Order in this case, with respect to at least those issues Appellant believed the Court of Appeals overlooked or misapprehended, as set forth in appellant's Petition for Rehearing, the Court of Appeals in this case not only denied the Petition for Rehearing but refused to issue the opinion or explanation requested. Thus, in preparing this Petition for a Writ of Certiorari, Petitioner is handicapped by lack of information as to the basis in fact and law of the Court of Appeals decision on the separate issues which are the referred to hereinabove in this Petition for a Writ of Certiorari.

In effect, the Court of Appeals for the Third Circuit by refusing to hand down an opinion stating its own position with respect to the determinative issues presented on appeal to it for decision, has removed itself from the regular course of administration of justice in this case and as a practical matter has forced Petitioner to attempt to go (by way of Petition for Writ of Certiorari) directly from the District Court to the Supreme Court of the United States.

We contend that such denial, of one of the vital steps intended by the Congress to be an essential part of the administration of justice in the federal courts, violates due process.

FOURTH. In this case a judgement was rendered upholding the validity of United States copyright registrations obtained on

the basis of applications for registration in which the applicant claimed to be the "author" of the works of art covered by the applications, but which applicant was admittedly incapable of creating works of art of the type registered, and in fact did not create the particular works of art registered.

The United States Supreme Court should review this holding, to the effect that such a registration so obtained is valid. Otherwise, the door will be opened to a flood of United States copyright registrations in which persons who are not artists and who do not have the capability to create works of art of the type registered, and did not actually create the works of art for which the registration is requested, are credited with being authors to the exclusion of the artists who actually created or composed the works of art covered by the registrations.

The section of the 1909 Copyright Act pertinent to the naming of the actual author of the work for which registration is requested, in the application for registration, reads as follows:

> "Section. 209. Certificate of Registration; Effect as Evidence; Receipt for Copies Deposited
>
> In the case of each entry the person recorded as the claimant of the copyright shall be entitled to a certificate of registration under seal of the copyright office, to contain the name and address of said claimant, the name of the country of which the author of the work is a citizen or subject, and when an alien author domiciled in the United States at the time of said registration, then a statement of that fact, including his place of domicile, the name of the author (when the records of the copyright office shall show the same), the title of the work which is registered for which copyright is claimed, the date of the deposit of the copies of such work, the date of publication if the work has been reproduced in copies for sale, or publicly distributed, and such marks as to class designation and entry number as shall fully identify the entry.

> In the case of a book, the certificate shall also state the receipt of the affidavit, as provided by section 17 this title, and the date of the completion of the printing, or the date of the publication of the book, as stated in the said affidavit. The Register of Copyrights shall prepare a printed form for the said certificate, to be filled out in each case as above provided for in the case of all registrations made after July 1, 1909, and in the case of all previous registrations so far as the copyright office record books shall show such facts, which certificate, sealed with the seal of the copyright office, shall, upon payment of the prescribed fee, be given to any person making application for the same. Said certificate shall be admitted in any court as prima facie evidence of the facts stated therein. In addition to such certificate the register of copyrights shall furnish, upon request, without additional fee, a receipt for the copies of the work deposited to complete the registration.

CONCLUSION

For the reasons set forth herein, Petitioner respectfully requests that this Court issue a Writ for Certiorari to the Third Circuit Court of Appeals in order to review the Judgement of that Court.

Respectfully submitted,

by H. Hume Mathews

H. Hume Mathews
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Dated: September 17, 1983

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 82-5763

DONALD FREEDMAN and
TREE-TIME, INC., - INTERLUDE

V.

MAHESH C. MANGALICK and
MANGALICK ENTERPRISES, INC.

Mangalick Enterprises, Inc.,
Appellant

(D. C. Civil No. 78-10144)

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
Hon. H. Lee Sarokin, District Judge

Submitted Under Third Circuit Rule 12(6)
August 5, 1983
Before: GIBBONS and HUNTER, Circuit Judges
and MANSMANN, District Judge*

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*Hon. Carol Los Mansmann, United States District Judge for the Western District of Pennsylvania, sitting by designation.

H. HUME MATHEWS, ESQ.
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Attorneys for Appellant

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Gateway 1, Suite 2404
Newark, New Jersey 07102

Attorneys for Appellee

JUDGEMENT ORDER

Mahesh C. Mangalick and Mangalick Enterprises, Inc. appeal from a judgment in favor of the plaintiffs in their action for copyright infringement and unfair competition. The appellants contend:

(1) that the trial court erred in denying a joint motion, in the course of the trial, to dismiss the jury and continue a bench trial;

(2) that the jury's verdict is not supported by the evidence, and that their

motions for a new trial or for judgment notwithstanding the verdict should have been granted; and

(3) that the court erred in awarding attorneys fees and costs to the prevailing parties.

We find no merit in these contentions.

It is O R D E R E D and A D J U D G E D that the judgment of the district court is affirmed. Costs are taxed in favor of appellees.

BY THE COURT,

s/ John J. Gibbons
Circuit Judge
ATTEST:
s/ Sally Mrvos
Sally Mrvos, Clerk

Dated: August 8, 1983

APPENDIX B

UNITED STATES DISTRICT COURT

For The

000093

Civil Action File No. 78-1044

Donald Freedman and Tree-Time, Inc.-Interlude	]	
vs.	]	JUDGMENT
Mahesch C. Mangalick and Mangalick Enterprices, Inc	]	

This action came on for trial before the Court and a jury, Honorable H. Lee Sarokin, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It is Ordered and Adjudged that judgment be entered in favor of Donald Freedman and Tree-Time, Inc.-Interlude,

plaintiffs, and against the defendants, Mahesh C. Mangalick and Mangalick Enterprises, Inc., in the sum of $50,000.00 with costs.

ORIGINAL FILED
Jul 22 1980

Angelo W. Locascio
Clerk

Dated at Newark, New Jersey, this 22 day of July, 1980.

s/ H. Lee Sarokin

UNITED STATES DISTRICT JUDGE

APPENDIX C

ORDER OF U. S. DISTRICT COURT
FOR THE
DISTRICT OF NEW JERSEY

October 29, 1980

ORDER

000094

This matter having been raised on motions by plaintiffs and defendants and upon consideration of the motions and affidavits attached thereto and consideration of arguments of counsel both in writing and at oral argument, it is this 29 day of October, 1980;

ORDERED, ADJUDGED AND DECREED AS follows:

1. The defendant Mahesh C. Mangalick's motion to delete the individual defendant Mahesh C. Mangalick from the Order filed

July 22, 1980 is hereby granted by the consent of the parties;

2. The defendants' motion to stay execution of or any proceedings to enforce the judgment in this matter pending the final disposition of posttrial motions and an appeal, if any, is hereby granted if, and only if, the defendant Mangalick Enterprises, Inc. posts a bond in the full amount of the judgment plus $5,000;

3. The defendants' motion for judgment NOV is denied;

4. The defendants' motion for a new trial is denied;

5. The defendants' motion to reduce the award of damages is denied;

6. The defendants' motion for costs and counsel fees is denied; and

7. The plaintiffs' motion for costs

and counsel fees is hereby granted, the amount to be determined by the Hon. Serena Peretti.

s/ H. Lee Sarokin
H. Lee Sarokin, USDJ

Dated: October 29, 1980
Newark, New Jersey

APPENDIX D

DONALD FREEDMAN and TREE-TIME, INC., INTERLUDE Plaintiffs, v. MAHESH G. MANGALICK and MANGALICK ENTERPRISES, INC., Defendants	:	UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY Civil No. 78-1044 Honorable H. Lee Sarokin

O R D E R

IT IS on this 1 day of November, 1982 O R D E R E D:

1. The Report and Recommendation of Magistrate Serena Perretti, dated October 20, 1982, be and the same hereby is adopted as the Opinion of this court.

2. For the reasons stated therein plaintiff is hereby awarded attorney's fee in the amount of $14,911.00 together with costs of $499.20.

s/ H. Lee Sarokin
H. LEE SAROKIN
U.S.D.J

xc: Magistrate Serena Perretti

ORIGINAL FILED

Nov 1 1982

Allyn Z. Lite, Clerk

APPENDIX E

ORIGINAL FILED

Nov 29 1983

Allyn Z. Lite, Clerk

DONALD FREEDMAN and TREE-TIME, INC., INTERLUDE	:	UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY
Plaintiffs,	:	
v.	:	Civil No. 78-1044
MAHESH G. MANGALICK and MANGALICK ENTERPRISES, INC.,	:	Honorable H. Lee Sarokin
Defendants	:	

NOTICE OF APPEAL
TO THIRD CIRCUIT COURT OF APPEALS
FROM A JUDGMENT AND ORDER
OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Notice is hereby given that Mangalick Enterprises, Inc., Defendant above named,

hereby appeals to the United States Court of Appeals for the Third Circuit, from the final judgment entered in this action on July 24, 1980, and from the order filed November 5, 1980, copies of both of which are attached.

In addition, the said defendant hereby appeals from the following final judgment and orders entered in this action on or about the dates indicated:

Judge Sarokins Order filed November 1, 1982 awarding plaintiff attorney fees in the amount of $14,911.00 together with costs of $499.20, copy attached.

Judge Sarokins finding dated November 1, 1982 that Magistrate Perrettis report and

recommendation filed May 7, 1982 "is clearly erroneous," copy attached.

Judge Sarokins protective order permanently sealing Magistrate Perrettis report and recommendation filed May 7, 1982 at the request of an outside attorney, who did not represent any party to the action at the time of said request, without the consent of the parties to the action or their respective attorneys.

Judge Sarokins failure to act upon, either favorably or unfavorably, defendants application for an Order

vacating said protective order.

MATHEWS, WOODBRIDGE, GOEBEL,
LAUGHLIN & REICHARD

By s/ H. Hume Mathews
H. HUME MATHEWS
Attorney for Defendants

Dated: November 26, 1982

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 82-5763

DONALD FREEDMAN and
TREE-TIME, INC., - INTERLUDE

V.

MAHESH C. MANGALICK and
MANGALICK ENTERPRISES, INC.

Mangalick Enterprises, Inc.,
Appellant

(D. C. Civil No. 78-10144)

BEFORE: GIBBONS and HUNTER, Circuit Judges,
and MANSMANN, District Judge*

Upon the consideration of the petition for rehearing by appellant before the original panel,

It is O R D E R E D that the

petition for rehearing before the original panel is denied.

BY THE COURT,

s/ John J. Gibbons

Circuit Judge

Dated: August 26, 1983

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*Hon. Carlo Los Mansmann, United States District Judge for the Western District of Pennsylvania, sitting by designation.